

# Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

- - - - - +	
SULEIMAN ABDULLAH SALIM, et al,	
Plaintiffs,	Case Number:
vs.	2:15-cv-286-JLQ
JAMES E. MITCHELL and JOHN JESSEN,	
Defendants.	
- - - - - +	

Videotaped Deposition of Jose Rodriguez  
Washington, D.C.  
Tuesday, March 7, 2017  
10:00 a.m.

Job No. 302803  
Reported by: Laurie Bangart, RPR, CRR

1 And again, just for the record, this is Exhibit H  
2 to Exhibit 36, right?

3 Sorry, Mr. Rodriguez. Do you recognize  
4 this as Dr. Jessen's contract?

5 A It looks like it. I hadn't seen it  
6 before.

7 Q You had not seen it before?

8 A Hadn't seen it before I was shown this,  
9 this exhibit.

10 Q I'm sorry. You had not seen it before  
11 today?

12 A No, before -- I was shown this exhibit  
13 in preparation for this meeting.

14 Q Okay. This exhibit was attached to your  
15 declaration.

16 A Correct. I saw it then.

17 Q Okay, and before that, you had not seen  
18 it?

19 A No.

20 Q Do you know whether it's Dr. Jessen's  
21 contract?

22 A It looks like it.

23 Q Based on your information, did he  
24 fulfill the terms of his contract?

25 A Yes.

1 Q And if you turn to the top of the second  
2 page of it, it says "Services."

3 Do you see that?

4 A Yes.

5 Q And the services are, "Task 1, Provide  
6 consultation and recommendations for applying  
7 research methodology."

8 Do you see that?

9 A Yes.

10 Q Then it says "CONUS." What does "CONUS"  
11 stand for?

12 A CONUS is the US.

13 Q And then it says, "Conduct specified  
14 applied research projects."

15 Do you see that?

16 A Yes.

17 Q And your testimony is that Dr. Jessen  
18 fulfilled the terms of the contract by providing  
19 those services; is that right?

20 A Correct.

21 Q So back to Dr. Mitchell for a second,  
22 did you select Dr. Mitchell to work with CTC?

23 A Once he was recommended and I met  
24 Dr. Mitchell, yes, I recommended him to continue  
25 working with us.

1 Q I want to read you a passage from your  
2 book, and when I say "your book," I'm referring to  
3 the book Hard Measures.

4 Do you see that there?

5 A Yes.

6 Q That looks like you?

7 A That looks like me.

8 Q Yeah, and, and --

9 MR. BENNETT: Ill stipulate that  
10 that's him.

11 MR. LUSTBERG: You're so  
12 reasonable.

13 MR. BENNETT: Thank you.

14 BY MR. LUSTBERG:

15 Q I'm going to just -- we're going to just  
16 mark this as Exhibit 37, yeah. We'll mark  
17 passages for now.

18 (Exhibit 37 was marked for  
19 identification.)

20 BY MR. LUSTBERG:

21 Q So if you could take a look at page 55,  
22 which is the first page. Do you see that?

23 A Yes.

24 Q And in the second full paragraph is the  
25 sentence, "Within two days of AZ's capture, we

1 tracked down the contractor and asked if he would  
2 accompany a team of CTC officers to the black site  
3 where we hoped Abu Zubaydah would be  
4 interrogated."

5 Do you see that?

6 A Yes.

7 Q First of all, the reference to "AZ" is  
8 Abu Zubaydah, correct?

9 A Correct.

10 Q And the reference to "the contractor" is  
11 Dr. Mitchell; is that correct?

12 A Correct.

13 Q Okay. So how did you reach him within  
14 two days of AZ's capture?

15 A Well, I assume that he was at  
16 headquarters. Somebody, you know, somebody  
17 reached him. I did not reach him myself.  
18 Somebody in the Counter-Terrorism Center reached  
19 him.

20 Q Did you know him at that time?

21 A I did not know him.

22 Q So that was the first time that you had  
23 met Dr. Mitchell?

24 A I met him, yes, for the first time.

25 Q Mm-hmm. Ultimately, though, you were

1 the one who made the decision to hire him at CTC?

2 A Yes.

3 Q Why did you think he was qualified?

4 A Because of his experience with SERE and  
5 because we needed to do something different than  
6 what had been done before, and he looked like the  
7 right person to do it.

8 Q Why did he look like the right person to  
9 do it?

10 A Because he had a tremendous expertise,  
11 and he had a good vision for what needed to be  
12 done.

13 Q What did he have "tremendous expertise"  
14 in?

15 A In SERE.

16 Q What was his SERE experience, to your  
17 knowledge, at that time?

18 A He had spent many years with the Air  
19 Force working on SERE.

20 Q Did he have -- was there any other  
21 source of his tremendous expertise?

22 A The expertise I was interested in was  
23 SERE.

24 Q When you said "he had a good vision for  
25 what needed to be done," what was that good

1 vision?

2 A That good vision was the use of enhanced  
3 interrogations to get Abu Zubaydah to cooperate  
4 with us.

5 Q Was that his idea?

6 A It was a recommendation. I don't  
7 remember exactly who the recommendation came from,  
8 but I assume he was part of that recommendation.

9 Q I'm sorry. He was -- you're saying that  
10 he was recommended to you?

11 A That was a recommendation from him  
12 regarding the use of the enhanced interrogation  
13 techniques.

14 Q I see, okay, and that's -- so his -- the  
15 recommendation from him to use enhanced  
16 interrogation techniques was what you mean when  
17 you said he had "a good vision"?

18 A Yes.

19 Q Okay.

20 A He had a good vision for how to get this  
21 person to tell us about the pending attacks on the  
22 US.

23 Q Other than Dr. Mitchell's experience at  
24 SERE, did he have any other qualifications that  
25 you were aware of at that time?



1           A     Well, he came with a Ph.D., highly  
2     regarded, and then the SERE experience is the one  
3     that I was interested in.

4           Q     How did you know he was highly regarded?

5           A     I was told.

6           Q     The Senate Select Committee On  
7     Intelligence report, which I know you have some  
8     concerns about, says that "neither Dr. Mitchell  
9     nor Dr. Jessen," quote, "had any experience as an  
10    interrogator, nor did either have specialized  
11    knowledge of Al-Qaeda, a background in  
12    counter-terrorism, or any relevant cultural or  
13    linguistic experience."

14                    You've read that before, right?

15           A     I've read that before.

16           Q     And what's your response to that?

17           A     My response to that is that at some  
18    time -- sometimes it is important to do something  
19    different, because what's traditionally been done  
20    hasn't worked, and this was something different,  
21    and it worked very well.

22           Q     So Dr. Mitchell was proposing --  
23    "recommending" was your word -- something  
24    different, right?

25           A     Yes.

1 training program that trains our people how to  
2 withstand interrogation tactics. They had  
3 knowledge and background on Islamic extremism."

4 What knowledge and background on Islamic  
5 extremism do you believe that Drs. Mitchell and  
6 Jessen had?

7 A Well, first of all, their knowledge of  
8 psychology, human behavior was one that, as he  
9 points in his paper here, translates into all  
10 cultures. I saw him, how he dealt with the Arab  
11 culture, and I thought, you know, this is a person  
12 who understands it and can deal with it.

13 Q So your belief that they had knowledge  
14 and background on Islamic extremism came about as  
15 a result of your observations of them during the  
16 course of interrogations; is that correct?

17 A Correct.

18 Q Do you have any other knowledge with  
19 regard to their knowledge and background on  
20 Islamic extremism?

21 A No.

22 Q Okay. Does it -- how do you feel about  
23 the fact that Dr. Mitchell and Dr. Jessen in  
24 their, what I just read to you, say that they  
25 didn't have knowledge about -- and background on

1 Islamic extremism?

2 A I have no feeling about it.

3 Q I want to ask you for your response to a  
4 couple other statements that have been made about  
5 Dr. Mitchell and Dr. Jessen's background.

6 In her book, *The Dark Side*, Jane Mayer  
7 says that "according to one colleague who is an  
8 interrogator, Mitchell had not even observed an  
9 interrogation," referring to prior to, to this,  
10 this assignment.

11 Do you know whether that's true or not?

12 A I do not.

13 Q And Ali Soufan from the FBI says the  
14 same thing.

15 To your knowledge, is it true that  
16 Dr. Mitchell had never even observed an  
17 interrogation prior to his assignment?

18 A I do not know.

19 Q Okay. I want to ask you to turn to  
20 paragraph 42 of your declaration, and that's on  
21 page 7, Mr. Rodriguez.

22 A Okay.

23 Q In paragraph 42(a) you say, "Before  
24 September 11, 2001, the CTC had no resident  
25 expertise in interrogation"; is that correct?

1 A True.

2 Q When I say "is that correct," it's not  
3 just that you said it; that was a true fact?

4 A True.

5 Q Okay, and it says in (b), "To be used  
6 effectively, interrogation skills must be  
7 developed over years" and that "interrogation was  
8 not a part of the CTC's core counter-terrorism  
9 mission."

10 Is that true?

11 A True.

12 Q So were you -- did you have expertise in  
13 interrogation?

14 A No.

15 Q That is not something that you had done  
16 in your prior assignments with the CIA?

17 A No.

18 Q And were you in a position to evaluate  
19 then whether somebody was doing a good job at  
20 interrogation or not?

21 A Only in terms of results.

22 Q But it's not an area that you had any  
23 training or experience in?

24 A At the CIA, many times we take on new  
25 jobs, and we don't have any training or

1 experience. Like myself, I came to CTC. I had  
2 never done any CTC work. You come and you learn  
3 it, and you very quickly become pretty  
4 knowledgeable about it.

5 Q Okay. I really want to focus here on  
6 paragraph 42(c), the next, the next subparagraph  
7 down.

8 Do you see that?

9 A Yes.

10 Q And that says, "Having been referred to  
11 the CTC by the OTS, Drs. Mitchell and Jessen were  
12 eminently qualified to assist the CTC in  
13 developing and applying EITs."

14 Do you see that?

15 A Yes.

16 Q The fact that Drs. Mitchell and  
17 Jessen -- well, first of all, it says -- strike  
18 that. Let me start over, try to ask a decent  
19 question.

20 As you point out, that they were  
21 referred -- Drs. Mitchell and Jessen were referred  
22 to the CTC by the OTS; is that correct?

23 A Yes.

24 Q Is it true that Dr. Jessen was referred  
25 to the CTC by the OTS?

1           A       Jessen was -- Mitchell was referred.  
2 Mitchell was referred. Jessen was referred by  
3 Mitchell.

4           Q       So is the fact that they were referred  
5 to the CTC by the OTS one of the reasons why you  
6 believe they were, quote, "eminently qualified to  
7 assist the CTC in developing and applying EITs"?

8           A       Yes.

9           Q       What about the reference from the OTS  
10 led you to conclude that they were eminently  
11 qualified?

12          A       I just took it for granted that they  
13 knew what they were doing.

14          Q       And you took it for granted based upon  
15 the referral from the OTS; is that right?

16          A       Yes.

17          Q       You mentioned a few minutes ago that,  
18 that Dr. Jessen was referred to you by  
19 Dr. Mitchell; is that right?

20          A       Yes.

21          Q       What -- did you make the decision to  
22 hire Dr. Jessen?

23          A       Yes.

24          Q       What did you do to vet him? Anything?

25          A       Nothing.

1 of the CIA interrogation program"?

2 A Who, who describes him?

3 Q We're going to show you what has been  
4 previously marked as Exhibit 4 in this case.

5 A Okay.

6 MR. JAMES SMITH: Can I ask that  
7 the question be read back? Is there a  
8 pending question, Mr. Lustberg?

9 MR. LUSTBERG: I tell you what.  
10 Why don't I -- I'll withdraw whatever  
11 question was pending and just ask another  
12 one --

13 MR. JAMES SMITH: Perfect. Thank  
14 you.

15 MR. LUSTBERG: -- just so it's  
16 clear.

17 BY MR. LUSTBERG:

18 Q If you look at the cover page, it says  
19 "Interrogating the Enemy, The Story of the CIA's  
20 Interrogation of Top al-Qa'ida Terrorists (Working  
21 Title) by James E. Mitchell, Ph.D.," and then it  
22 says "Architect of the CIA Interrogation Program,"  
23 and my question is: Do you agree with the  
24 characterization of James E. Mitchell, Ph.D. as  
25 the "Architect of the CIA Interrogation Program"?

1 MR. JAMES SMITH: Objection.

2 THE WITNESS: Yes.

3 THE REPORTER: You objected? I  
4 couldn't hear you.

5 MR. JAMES SMITH: I did.

6 MR. BENNETT: You objected?

7 MR. JAMES SMITH: Yes.

8 BY MR. LUSTBERG:

9 Q So I didn't at the beginning talk to  
10 you, as I should have, about objections.

11 MR. BENNETT: I did.

12 BY MR. LUSTBERG:

13 Q Okay, so since your attorney has  
14 instructed you, when there's an objection, unless  
15 your attorney directs you not to answer, you  
16 should answer anyway, which you did.

17 So your answer to that question was yes?

18 A Yes.

19 Q So you agree that Dr. Mitchell was the  
20 architect of the CIA interrogation program?

21 A Yes.

22 Q I'm going to direct your attention to a  
23 couple other passages from, from this book.

24 MR. JAMES SMITH: Objection.

25 Mr. Lustberg, just so we're clear, this is



1 not the book. This is a draft.

2 MR. LUSTBERG: That's correct.

3 BY MR. LUSTBERG:

4 Q So just to be clear, what I've shown you  
5 is a, is a manuscript that was submitted. It's --  
6 we're not using the final version of the book. I  
7 don't think there's any differences, but okay.

8 MR. JAMES SMITH: Well,  
9 Mr. Lustberg, you know that that passage was  
10 removed that you just read to the witness.

11 MR. LUSTBERG: Right.

12 MR. JAMES SMITH: So saying for the  
13 record that there aren't any differences, I  
14 don't think you mean to do that.

15 MR. LUSTBERG: Okay. I asked him  
16 about whether he agreed with the  
17 characterization, and he said yes.

18 MR. JAMES SMITH: I hear you.

19 BY MR. LUSTBERG:

20 Q Directing your attention to pages 54 and  
21 55 of the manuscript -- actually, page 54  
22 describes the meeting that we were just  
23 discussing.

24 Do you see that?

25 A What paragraph?

1 Q Page 54.

2 A 54?

3 Q Mm-hmm.

4 A Okay.

5 Q Looking at the first full paragraph on  
6 page 55, Dr. Mitchell writes, "A day or so later  
7 Rodriguez asked me if I would help put together an  
8 interrogation program using EITs."

9 Do you see that?

10 A Yes.

11 Q Is that true?

12 A True.

13 Q It's true that you did ask him to do  
14 that?

15 A Yes.

16 Q To put together an interrogation  
17 program?

18 A Correct.

19 Q Okay, and in particular, if you go a  
20 little further down that paragraph, it says, "Jose  
21 not only wanted me to help them craft the program,  
22 he wanted me to conduct the interrogations using  
23 EITs myself."

24 Was it correct that you wanted him to  
25 craft the program?

1 A Correct.

2 Q Okay, and just going back to -- going  
3 back to the excerpts from your own book,  
4 Mr. Rodriguez -- and, and by the way, just let me  
5 backtrack.

6 In, in the passages I read to you from  
7 Dr. Mitchell's manuscript, when it talked about  
8 "Mr. Rodriguez" or "Rodriguez" and "Jose," those  
9 refer to you?

10 A Yes.

11 Q I mean when, if when -- if his  
12 description of what occurred was accurate, if --  
13 that, that was you, Jose Rodriguez, who was being  
14 referred to, correct?

15 MR. BENNETT: Unless it was the  
16 barber downstairs that I told you about  
17 before.

18 BY MR. LUSTBERG:

19 Q Do you have any --

20 A I was the only Jose Rodriguez at the  
21 agency, I think, at the time, so . . .

22 Q The barber downstairs wasn't --

23 A He wasn't there.

24 Q He wasn't at those meetings?

25 MR. BENNETT: I'm sorry.

1 MR. LUSTBERG: No, no. We need  
2 that.

3 BY MR. LUSTBERG:

4 Q Okay. Just directing your attention in  
5 your own book to page 62 --

6 MR. JAMES SMITH: For the record,  
7 the witness has Exhibit 37 before him?

8 MR. LUSTBERG: Yes. Yes, sir.  
9 Thanks.

10 BY MR. LUSTBERG:

11 Q Page 62, which is the second page. In  
12 the first full paragraph on page 62, the -- you  
13 write, "I asked the contractor," and the  
14 contractor refers to Dr. Mitchell, correct? Does  
15 the contractor refer to Dr. Mitchell?

16 A Yes.

17 Q Okay. "How long it would take, if we  
18 employed more aggressive, but legal, techniques,  
19 before he would know whether a detainee was  
20 willing to cooperate or was so dedicated that he  
21 would take any secrets he had with him to the  
22 grave. 'Thirty days' was his estimate. I thought  
23 about it overnight, and the next morning asked the  
24 contractor if he would be willing to take charge  
25 of creating and implementing such a program."

1 Do you see that?

2 A Yes.

3 Q So is it correct that you asked  
4 Dr. Mitchell if he would take charge of creating  
5 and implementing a program?

6 A Yes.

7 Q And that program was the program of  
8 enhanced interrogation techniques; is that right?

9 A Correct.

10 Q And you were under instructions at that  
11 time from Director Tenet to develop a, an  
12 interrogation program; is that right?

13 A Correct.

14 Q So I just want to make sure I understand  
15 what happened then, and I direct your attention  
16 for purposes of that to paragraph 46 of your  
17 declaration, which is Exhibit 36, on page 8 of the  
18 declaration.

19 A Yes.

20 Q Do you see that?

21 So this refers to a meeting on July 8,  
22 2002, at headquarters with Drs. Mitchell and  
23 Jessen, if you look at paragraph 44.

24 Do you see that?

25 A Yes.

1 Q In paragraph 46 it says, "At the  
2 conclusion of this meeting, I requested that  
3 Drs. Mitchell and Jessen provide me with a written  
4 list identifying the potential EITs, describing  
5 how they would be implemented and identifying  
6 their intended effects upon Zubaydah."

7 Do you see that?

8 A Yes.

9 Q And they, in fact, did that, correct?

10 A Correct.

11 Q If you look at Exhibit J to your, to  
12 your declaration, is that the list of EITs that,  
13 that they provided as a result of your request?

14 A Yes.

15 Q And that -- let me just withdraw it.

16 If you go to the next page, paragraph 49  
17 of your declaration, page 9, paragraph 49. Sorry.  
18 Thanks.

19 I want to ask you about paragraph 49.  
20 It says, "During July 2002, with Drs. Mitchell and  
21 Jessen's input only as requested, the CTC began  
22 devising an interrogation plan for Zubaydah  
23 utilizing some or all of the EITs (hereinafter,  
24 the 'EIT Program')."

25 So was the EIT program based upon the

1 list that Dr. Mitchell had provided to you?

2 A Yes.

3 Q And you discussed in many places the  
4 fact that, however, you wouldn't implement that  
5 until you got approval --

6 A Correct. I'm sorry.

7 Q No, no, that's okay, but you sought  
8 permission for all of those techniques, correct?

9 A Correct.

10 Q Okay, and just so that the record is  
11 clear, the techniques for which you sought  
12 approval were -- and we can follow along, if you  
13 want to, on Exhibit J -- were the attention grasp,  
14 walling, facial hold, facial slap, cramped  
15 confinement, wall standing, stress positions,  
16 sleep deprivation, waterboard, use of diapers,  
17 insects, and mock burial.

18 Now, I'm not asking what got approved.  
19 I'm asking whether those were the techniques for  
20 which you requested approval.

21 A Yes.

22 Q And again those are the techniques that  
23 are set forth in the list that was provided by  
24 Dr. Mitchell and Dr. Jessen, correct?

25 A Yes.

1 Q Did you request approval for techniques  
2 other than those that were set forth on the list  
3 provided by Drs. Mitchell and Jessen?

4 A I don't recall that.

5 Q Okay, and this became, this became the  
6 formal interrogation -- ultimately when there was  
7 approval granted for at least some of them, this  
8 became the formal interrogation plan of CTC; is  
9 that correct?

10 A Yes.

11 MR. JAMES SMITH: Objection.

12 THE REPORTER: Did you object?

13 MR. JAMES SMITH: Yes.

14 BY MR. LUSTBERG:

15 Q Okay, and in particular, if you look at,  
16 in your declaration --

17 MR. BENNETT: Don't worry about it.

18 MR. LUSTBERG: Yeah, don't worry  
19 about that.

20 THE WITNESS: I'm just asking.

21 MR. LUSTBERG: Oh, about the  
22 objection?

23 THE WITNESS: The objection, yeah.

24 MR. BENNETT: I have no idea.

25 MR. LUSTBERG: To be honest,



1           neither do I, but he knows. That's good.

2       BY MR. LUSTBERG:

3           Q     If you look at paragraph 58 on page 10  
4       of your declaration.

5           A     Mm-hmm.

6           Q     This talks about the Zubaydah formal  
7       interrogation plan, and there's a cable, which is  
8       Exhibit M, if you could pull out Exhibit M. "M"  
9       as in Mary.

10                  In your declaration you state that the  
11       cable constituted Zubaydah's formal interrogation  
12       plan, and just referring to that exhibit, if you  
13       look at the second page, paragraph 4, do you see  
14       where it says "Background"?

15           A     Yes.

16           Q     Do you see the list of enhanced  
17       interrogation techniques that are listed there?

18           A     Correct.

19           Q     It's a fact, isn't it, that those are  
20       the same interrogation techniques -- let me try  
21       that again. They're the same enhanced  
22       interrogation techniques as are set forth in  
23       Dr. Mitchell and Dr. Jessen's memo to you, other  
24       than the mock burial, right?

25           A     I believe that's right.

1 Q Okay. It's important, it's an important  
2 fact, so if you could take a look and see if  
3 that's --

4 A I mean mock burial was definitely out,  
5 and I think that's the only one.

6 Q So is it fair to say, Mr. Rodriguez,  
7 that Drs. Mitchell and Jessen's proposal became  
8 the enhanced interrogation techniques program for  
9 the CIA?

10 A Yes.

11 Q And if you look at Exhibit I to your  
12 declaration, what is that? What is Exhibit I?

13 A Are you asking me?

14 Q Yes.

15 A A cable? A cable, do you mean?

16 Q Mm-hmm.

17 A I have to read it.

18 Q Take your time.

19 (Witness peruses document.)

20 BY MR. LUSTBERG:

21 Q I'm going to eventually direct your  
22 attention to paragraph 5, which is on the second  
23 page of the cable, which has a list of pressure  
24 techniques.

25 (Witness peruses document.)

1 THE WITNESS: No date?

2 BY MR. LUSTBERG:

3 Q Well, it says "date" -- 7 with no date,  
4 2002, so July 2002?

5 A I don't know if it's July.

6 Q Right.

7 A The date matters, but . . .

8 Q Okay. Well, let me ask you this: Where  
9 it says here --

10 A Let me finish here.

11 Q I'm sorry. I apologize. Take as much  
12 time as you need.

13 (Witness peruses document.)

14 BY MR. LUSTBERG:

15 Q Take your time. Let me know when you're  
16 ready.

17 A Yeah, what's your question?

18 Q My question is: Under 5 it says, "The  
19 below techniques are the menu of the preapproved  
20 interrogation techniques."

21 When it says "preapproved," who  
22 preapproved them?

23 MR. JOHNSON: Objection.

24 MR. LUSTBERG: Okay, let me -- I'll  
25 withdraw the question.

1 grant a formal declination of prosecution, in  
2 advance, for any employees of the United States,  
3 as well as any other personnel acting on behalf of  
4 the United States, who may employ methods in the  
5 interrogation of Abu Zubaydah that otherwise might  
6 subject those individuals to prosecution under  
7 Section 2340A of Title 18 of the United States  
8 Code as well as under any other applicable U.S.  
9 law."

10 Do you have any knowledge of that  
11 request?

12 A Well, this is from the Office of General  
13 Counsel, so I assume they made that request.

14 Q Oh, you're saying that you were not  
15 aware of it?

16 A I probably was aware of it, but I don't  
17 recall. I don't have any specific recollection.

18 Q Okay. So let's go back to your -- you  
19 can just put it there -- the, um, your effort to  
20 gain approval from the Department of Justice for  
21 these techniques. You -- in doing, in seeking  
22 that approval, you explained to the Department of  
23 Justice, didn't you, that the techniques were  
24 based on experience with the SERE program, right?

25 A Our lawyers did.

1 Q Mm-hmm. Let's -- in your -- if you go  
2 to your declaration and turn, if you would, to  
3 Exhibit L.

4 MR. BENNETT: Can we take a minute?

5 MR. LUSTBERG: Absolutely, yes.

6 THE VIDEOGRAPHER: The time is  
7 12:24 p.m. Off the record.

8 (Whereupon, the lunch recess was  
9 taken.)

10 THE VIDEOGRAPHER: The time is  
11 1:03 p.m. We're back on the record.

12 MR. LUSTBERG: Thank you.

13 BY MR. LUSTBERG:

14 Q Mr. Rodriguez, before the lunch break,  
15 we were discussing the process whereby you sought  
16 and obtained legal authorization for the, for the  
17 enhanced interrogation technique program.

18 Do you remember that?

19 A Yes.

20 Q And when you sought that, that approval,  
21 it was based upon what you had learned from  
22 Drs. Mitchell and Jessen with regard to the SERE  
23 program, correct?

24 A Correct.

25 Q Okay, and what exactly were you told

1 about the applicability of the SERE program to  
2 these, to these techniques?

3 MR. JAMES SMITH: Objection.

4 BY MR. LUSTBERG:

5 Q Let me be clear -- the question is  
6 withdrawn. It's a good objection.

7 What were you told by Drs. Mitchell and  
8 Jessen about the applicability of the SERE program  
9 to these techniques?

10 A That there was a good chance it could  
11 work.

12 Q Were you told -- was there any  
13 discussion of whether the differences between the  
14 SERE program which is applied to students, what  
15 the differences would be between that program and  
16 applying these to detainees in captivity?

17 A Well, I don't remember a particular  
18 discussion about that, but I'm sure that it was  
19 considered --

20 MR. BENNETT: You answered the  
21 question.

22 BY MR. LUSTBERG:

23 Q You don't remember a discussion of that?

24 A I don't remember a discussion about  
25 that.

1           A     Upon capture -- I don't know. I don't  
2 know if there was a label that was put on that  
3 says, okay, this is it, you know, but we, we knew  
4 who they were, and they immediately were sent to a  
5 black site.

6           Q     As between medium-value and low-value  
7 detainees, you said those were in two other  
8 categories. Who made the decision as to whether  
9 somebody was a medium-value versus a low-value  
10 detainee?

11                   MR. JOHNSON: Just note, we're not  
12 waiving the question itself, but no names or  
13 identifying information.

14                   MR. LUSTBERG: Right.

15 BY MR. LUSTBERG:

16           Q     Just so it's clear, did you make the  
17 decision as to who was a medium-value versus  
18 low-value detainee?

19           A     No.

20           Q     Somebody else at the CIA did?

21           A     I think the definition was if they had  
22 information that was threatening to the US  
23 government or persons, that that was the standard.

24           Q     But somebody would have to assess that,  
25 and so I'm asking whether that person was you.

1           A     The CTC is a huge vast place with a lot  
2 of people making decisions like this, made  
3 somewhere else.

4           Q     Dr. Mitchell and Dr. Jessen did not  
5 select which detainees were high-value --

6           A     No.

7           Q     -- detainees, did they?

8           A     No.

9           Q     So they designed a program for the CIA  
10 to get prisoners to talk, but the CIA would decide  
11 which prisoners to apply it to; is that right?

12          A     That is correct.

13          Q     And Dr. Mitchell and Dr. Jessen  
14 consulted continuously for the CIA the entire time  
15 that enhanced interrogation techniques were used  
16 by the CIA, right?

17          A     Correct.

18          Q     And they continued to consult on the  
19 EITs for years after Abu Zubaydah, right?

20          A     Yes. There were a couple times when  
21 they were stopped altogether because of legal  
22 action or because of whatever, so there were a  
23 number of times when there was a hiatus in the use  
24 of any techniques.

25          Q     Okay. Hiatus in the use of any enhanced



1 interrogation --

2 A Yes. For example, the 2004 Office of  
3 Inspector General report came out. Because of the  
4 allegations in that report, I think a decision was  
5 made to stand down until we were able to get  
6 clarification from Justice Department, and then  
7 when the '05 -- there was the Hamden case, and  
8 there was something else in 2005 in December where  
9 again we had to suspend it, because we felt that  
10 the legal, the legal ground that we had was being  
11 eroded, and we were concerned that our officers  
12 were not being protected.

13 Q Okay. So there were times when the  
14 program was suspended because there was concern  
15 with its legality later on?

16 A Because of the OIG report and because of  
17 the, the watering down of the legal authorities  
18 that we had received back in 2002.

19 Q When you say "watering down," what do  
20 you mean?

21 A The solid legal ground that we had in  
22 2002, that memo that we received from Justice  
23 Department in August of 2002, telling us that the  
24 ten techniques were legal, they began to erode  
25 legally.

1 Q Just three more questions.

2 So the whole time, Dr. Mitchell and  
3 Dr. Jessen's role was to consult, and the CIA's  
4 role was to decide which detainees would be  
5 subject to the enhanced interrogation techniques;  
6 is that right?

7 A We, we were the ones that provided them  
8 the plan. We were the ones that told them, look,  
9 we can use these interrogation techniques on these  
10 individuals.

11 Q With respect to specific individuals?

12 A Yes.

13 Q So the last question has to do with your  
14 discussion that you had with Mr. Smith regarding  
15 the success of the program.

16 A Correct.

17 Q First of all, with regard to Mukhtar,  
18 that's Khalid Sheikh Mohammed.

19 A Yes.

20 Q And Padilla, that was all before the  
21 enhanced interrogation --

22 A Correct.

23 Q -- techniques, right?

24 A Correct.

25 Q So those successes are not attributable

1 to the enhanced interrogation techniques, are  
2 they?

3 A No, they are not, and I think I was  
4 clear on that.

5 Q Yeah, and you said when you were  
6 testifying with regard to this, that this is  
7 important to you, it's an important part of --

8 A Right.

9 Q -- what you were involved in and what  
10 your --

11 A Correct.

12 Q -- legacy is, right?

13 A Yes.

14 Q And that's one of the reasons why you  
15 react so strongly to the SSCI report, right?

16 A Well, in addition to the fact that it's  
17 factually wrong and it's, it's not right, what  
18 they allege.

19 MR. BENNETT: Can we go off the  
20 record for just one second.

21 THE VIDEOGRAPHER: 4:40 p.m., off  
22 the record.

23 (Whereupon, a short recess was  
24 taken.)

25 THE VIDEOGRAPHER: 4:41 p.m., we're

1 back on the record.

2 BY MR. LUSTBERG:

3 Q Just to follow up on that point, but  
4 leaving aside that whatever the factual  
5 inaccuracies are, one of the things that bothers  
6 you is that the SSCI report says that this program  
7 didn't work when you say it did work, right?

8 A Exactly right.

9 Q And to the extent that this lawsuit is  
10 an attack -- do you view this lawsuit as an attack  
11 on those techniques?

12 A Well, I just, I just think it's very  
13 unfair to have Jim and Bruce sued on cases where  
14 they were not even involved, you know, so in that  
15 case I just think it's unfair.

16 Q Okay, so you think it's unfair because  
17 they were not involved with --

18 A They were not -- they have been charged  
19 with something that they were not even involved  
20 in.

21 Q And, and they were not involved in it  
22 because your position is that the enhanced  
23 interrogation techniques that they designed were  
24 not used on those detainees?

25 A They were not involved, because they